

54
Aurora Root imp.
vs
Asher Rossiter
12012
1850
Prepared
W

No. 12012

Supreme Court of Illinois

Root, Imp.

vs.

Rossiter.

71641  7

State of Illinois

Warr County, Ind

Wm. Circuit Court to the
January Term AD 1848.

Asher Rossiter

DEB

Paul Simon

Debt and Dam \$500.00

Aurum Root

The Clerk will issue Summons
in the above entitled Cause.

Directed and Returnable as above &c., and also a
Munition directed to the County of Cork.

January 6th 1848.

Warm and Bright

In Rauten,

And afterwards, to wit on the 10th day of January, AD 1848 there was issued from said Clerk's Office a Summons of which the following is a copy

State of Illinois

Stam County } 28

The People of the State of Illinois
to the Sheriff of said County
Greeting

We Command You to Summones Reel Ambrose
and Anson Root of to be found in You County personally
to be and appear before the Circuit Court of said
County on the first day of the next Term thereof to be
holden at the Court house in Geneva on the fourth Monday
of January instant to answer unto Asher Rossiter of a
plea that they render to Asher Rossiter Five hundred dollars
which they owe and unjustly detain from him to his
damages as he says in the sum of Five hundred dollars
and make due return of this writ.

Nitrop Mark H Fletcher Clerk J.

1
Said Court And the Seal thereof at Geneva this
10th day of January AD 1848
J. B. Spalding Clerk

Recorded as follows "Executed this 11th January 1848
by Writing to Aaron Root - Paul Ambrose not to be
joined in the County" J. B. Spalding Sheriff
for L. S. Eaton Deput

And afterwards to wit on the 14th day of January
AD 1848 the Plaintiff, filed in this Clerk's Office a
Declaration of which the following is a copy.
State of Illinois)
Kane County, ss. Kane Circuit Court
Jan 1848

After Prosecutor Plaintiff in this suit by whom
and Wright his At any, Complain, of Paul Ambrose
and Aaron Root Defendants in this suit, who have
been summoned &c of a plea that they render to the
said Plaintiff the sum of Five hundred Dollars, which
they, owe to and from him unjustly detain: For that
whereas the said Defendants, hitherto to wit on the 26th
day of April AD 1845 at Geneva in the County of
Kane aforesaid by their Certain Writing obligating
sealed with their Seals And now shown to the Court
here, the date whereof is the day and Year aforesaid
acknowledged themselves to be held and firmly
bound unto the said Plaintiff in the sum of Five
hundred dollars above demanded to be paid to
the said Plaintiff, And the said Plaintiff according
to the form of the Statute in such case made and provided
says that the said Writing obligating was and is
subject to a certain Condition then and so written
whereby, after reciting to the effect following to wit

that the said Plaintiff, obligee in said Bond, had
lately before the Circuit Court of Hancock County, and State
of Illinois received a judgment in a certain plea
of trespass in the case upon promises against the
said Paul Ambrose for the sum of Three hundred and
sixty one dollars and forty seven cents and costs of
suit and that the said Ambrose prayed and obtained
an appeal from the said judgment to the Supreme
Court of this State it is provided that the said Ambrose
shall prosecute his said appeal with all due diligence
and shall pay the judgment, costs, interest and damages
in case the said judgment shall be affirmed, then
this bond shall be void, otherwise remain in full force
and effect; Nevertheless the said Plaintiff in fact
says that said Ambrose did not and has not prosecuted
his appeal with all due diligence but on the contrary
that after the making of said writing obligatory to suit
at the December Term of the Supreme Court of this State
held at Springfield, AD 1845 the said appeal was
dismissed by said Court for want of prosecution, and
the said Plaintiff further in fact says that the said Paul
Ambrose has not as yet paid to the said Plaintiff the
said judgment, costs, interest and damages nor any
part thereof; By means of which said several promises
the said Plaintiff hath sustained damages to a
large amount, to wit to the amount of five hundred
dollars, whereby an action hath accrued to him the
said Plaintiff to demand and have of and from
the said defendant the sum of five hundred dollars
above demanded; And the said Plaintiff avers
that at the time of the commencement of the suit
the said defendant does not reside and still resides
in the County of Hancock aforesaid; and the said

Ambrose resided in the County of Cook Illinois; Yet the said
defendants, although often requested so to do, have
not as yet paid the said sum of Five hundred dollars
above demanded to the said Plaintiff or any part
thereof, but have hitherto wholly neglected & refused
and still neglect and refuse so to do to his damage
of Five hundred dollars wherefore he brings his
suit &c

Brown & Wright
Pl. Plaintiff

Copy of Bond declared upon

Known all men by these Presents that we Paul Ambrose
and Aaron Root are held and firmly bound unto
Asher Rossiter in the penal sum of Five hundred dollars
of good and lawful Money of the United States for which
payment well and truly to be made, we bind ourselves
our heirs, executors, and administrators, jointly & severally,
jointly by these Presents. Sealed with our seals and
dated this 25th day of April 1845.

The condition of this obligation is such that
whenever the said Obligor hath, before the Circuit Court
of Ham County and State of Illinois received a judgment
on a certain Plea of trespass on the Case on promises
against the above bounden Paul Ambrose for the
sum of Three hundred and Sixty, one dollar and
Forty, seven cents, and costs of suit, and the said
Ambrose prayed and obtained an appeal from the
said judgment to the Supreme Court of this State. Now
if the said Paul Ambrose shall prosecute his said appeal
with all due diligence and shall pay the judgment
costs, interest & damages in case the said judgment
shall be affirmed then this obligation ^{shall} be void
otherwise to remain in full force and effect

executed in presence of

Paul Ambrose Seal
Aaron Root Seal

And afterwards to wit on the 26th day of January AD 1849, the defendant Root filed pleas of which the following are true copy to wit

Auson Root and Abel Ambrose }
at Debt } January Special
Asher Rossiter } Term AD 1848.

And the said defendant Auson Root implored to come and defend the wrong and injury where to and says that the said supposed writing obligation, in said declaration mentioned is not his due and of this the said defendant puts himself upon the country, &c

and the plaintiff doth the like } Wilson & Wilcox
Brown and Wright their attys } his Attorneys

And for a further plea in this behalf by leave of the court &c the said defendant Auson Root implored &c says &c to wit because he says, that after the making the said supposed writing obligation and before the commencement of this suit to wit on the first day of December AD 1847 the said defendant fully paid and satisfied to the said plaintiffs the full amount of his debt, damages, interest and costs, by him above in his declaration mentioned, and thus the said debt Auson Root is dead, to wit; wherefore he prays judgment whither the said plaintiff ought to have or maintain his aforesaid action thereof against the said defendant.

Wilson & Wilcox his attys
And for a further plea in this behalf as to all of said plaintiffs declaration except so much thereof as alleges that the said ^{debt} Abel Ambrose therein mentioned did not prosecute his appeal to the supreme court with due diligence, the said defendant Auson Root

implied to be by leave of the Court to come and
craver over of the said Bond and Condition in said
Plaintiff's declaration mentioned and it is read to
him & thereupon he says actio non because he
says that after the rendition of the said judgment
in the said plaintiff declaration mentioned and in the
Condition of the bond therein referred to described in favor
of ^{the} said Plaintiff, against the now co-defendant Paul
Ambrose and prior to the commencement of this suit
to wit on the 23^d day of April A.D. 1845 the said Plaintiff
sued out of the Office of the Clerk of the Circuit Court
of said Kane County (the said Kane Circuit Court being
the Court in and by which the aforesaid judgment was
rendered) a Writ of Execution in due form of Law
on his aforesaid judgment against the goods and
chattels, lands, and tenements, of the said Paul
Ambrose defendant therein and now co-defendant
in this suit, which said execution was afterwards
on the same day last mentioned delivered to the
Sheriff of Kane County, to execute, and the said
Sheriff afterwards and before the commencement
of this suit to wit on the same day and Year last
aforesaid at Kane County aforesaid by virtue of said
execution and for the satisfaction of the same, went
upon seizure and took a great value of goods and
chattels wares and Merchandize of the said Deft
Paul Ambrose, the same goods and Chattels, wares
and Merchandize, then and there being of great
value, greater than the amount then and there
due on said execution to wit of the value of five
hundred dollars; and the said Sheriff afterwards
and before the commencement of this suit to wit
on the day and Year last aforesaid, returned and

undorsaid said levy on said execution, all
of which the said defendant Anson Root is ready
to verify &c; wherefore he prays judgment if the
said plaintiff ought further to have or maintain
his action against them or against him the said
Wilson & Wilcox

Attys for Root

And afterward, to wit on the 26th day of January
AD 1849 the plaintiff filed his Replication to plea, which
is as follows to wit

Alfred Rossiter

vs

Debt

Paul Ambrose

Anson Root

And the said plaintiff as to
the said plea of the said
defendant Root by him

readily above pleaded says preclude now because he
says that after the making of the said writing ob-
ligatory and before the commencement of this suit to
wit. on the first day of December AD 1847 the said debt
did not fully pay and satisfy the said plaintiff
the full amount of his said debt, damages, interest
and costs by him above in his declaration mentioned
and this he prays may be enquired of by the Court &c

Brown & Wright Attys for Alf

And the said plaintiff as to the said³ plea of the said debt
Anson Root impleaded &c says preclude now because
he says, that after the issuing out of the writ of Execution
and the delivery of the same to the Sheriff &c as in said
plea mentioned, and after the levying upon, seizing
and taking of the goods and chattels wares and merchan-
dize of the said defendant Paul Ambrose by the said
Sheriff for the satisfaction of said Execution as in

Said plea mentioned to wit on the twenty sixth day
of April AD 1845 in Hanc County, Aforesaid, the said
defendant Paul Ambrose with the said Andson Root as his
surety, executed to the said Sheriff a forthcoming or del-
ivering Bond. Conditioned for the Satisfaction of said debt
and Costs for the return of the same goods and Chattels
seized, and Merchandize in said plea mentioned on
the first day of June next after the date thereof to wit
the first day of June AD 1845. And thereupon the said
Sheriff at the request of the said Ambrose and of the said
Root, released and redelivered the said goods and Chattels,
seized, and Merchandize to the said Ambrose; And the
said Plaintiff says that the said Ambrose and Root
did not, nor did either of them return to the said
Sheriff the said Goods and Chattels, seized, and Merchandize
on the first day of June AD 1845 according to the condi-
tion of said forthcoming or delivering Bond: nor have
they or either of them at any time, returned the same: nor
paid or satisfied the said debt and Costs or any part thereof
but on the contrary the said Goods and Chattels, seized, and
Merchandize, ever afterward, to wit on or about the 22^d
day of July, AD 1845 sold and exchanged by said Ambrose
for certain lots and lands, and said Plaintiff further
says that after the rendition of said judgment in favor
of said Plaintiff, against the said defendants Paul Ambrose
and after the levy of said execution upon said goods
and Chattels, seized, and Merchandize as in said third
plea mentioned to wit at the April Term of the Hanc County
Circuit Court AD 1845, (being the same term at which
the said judgment was rendered) the said defendant
Paul Ambrose prayed an appeal from said judgment
to the Supreme Court which was allowed by the Court
on condition that he file Bond with Andson Root.

As his security in Twenty days in the Pen at sum
of Five hundred Dollars, Conditional as the Law
directs, which was filed in the Office of the Clerk
of said Circuit Court with Anson Root as security
on the 28th day of April AD 1845. And within the
time by said Court for filing the same; and the said
Plaintiff further says that the said appeal was not
dismissed by said Supreme Court until the Dec.
Term thereof AD 1845, which was a long time after
the said writ of execution in said plea mentioned
had expired and by reason thereof the said
execution was and has been no further executed
than above stated, but has been returned by said
Shuff to the Clerk, and is now upon the files of
this Court, and this in the said Plaintiff is ready
to verify, wherefore he Prays judgment, and
his debt as aforesaid, together with his damages
by him sustained on account of the detention
thereof &c

For said Plaintiff

Atty for Plff.

And afterwards, to wit on the 26th day of January
AD 1849, the defendant filed his demurrer to the
Plaintiff's replication a copy of which is as follows

Anson Root et al	{	Debt	Main Circuit Court for Special Term 1849
ad,			
Asher Rossiter			

And the said defendant Anson
Root replied &c &c and says that the
Replication of the said Plaintiff to the Third plea of
the said Anson Root by him above pleaded is not
sufficient in Law, and he is not bound to answer &c
by Wilson Wilcox his Atty

And the said defendant Anson Root demurs
specially to said Replication and points out the
following cause of demurrer: That said Replication
is double and presents several distinct issues
wherefore &c Wilson & Wilcox his atty

And afterwards to wit on the 26th day of April
AD 1849 it being one of the days of the April Term of
Haw County Circuit Court AD 1849. the following
order was entered on said demurrer to wit

185 Asher Rossiter }
21 v } Debt

Paul Ambrose
Anson Root }

And now comes the Plaintiff
by Brown and Wright and
the defendant Root by

Wilson & Wilcox his Attorney also come, and the Court
having heard the argument of Counsel on the demurrer
hereofore filed to the Plaintiff's replication to the Third

Plea of said defendant Root doth overrule the same as
and said def^t Root failing to answer further to said Replication
the Cpts of said defendant Root, it is therefore ordered
by default for the sum of Five hundred dollars the amount
that the Plaintiff have judgment and execution against
of the sum of \$500 in said appeal bond to be discharged on the payment
of the sum of \$75.00 to the Plaintiff and charges in and
out of said sum of money Seventy Five dollars to gether with their
costs and charges herein.

And afterwards to wit on the 4th day of January
AD 1850 it being one of the days of the December Special
Term of Haw County Circuit Court AD 1849 the following
among other proceedings was had to wit

12 Asher Rossiter }
v } Debt

Anson Root
Paul Ambrose }

This day comes the Plaintiff
by Brown & Wright his Attorney
and the defendant by

Wilson & Wilcox also come, and waive a jury and submit this cause to the Court for trial; after hearing the evidence and argument of Counsel, the Court finds the issues joined in favor of the plaintiff. And awards his debt on the penal part of the bond sued on as the sum of Five hundred dollars, and his damages on the breaches assigned in his declaration as the sum of Four hundred and Seventy Five dollars and Eighty Cents; it is therefore considered by the Court that the plaintiff have and recover of the defendant Root his debt of Five hundred dollars, and his damages of Four hundred and Seventy Five dollars and Eighty Cents and Costs of this Suit expended and that he have execution therefor in conformity with the Statute therefor, ^{and that his appeal be allowed, to supersede} Court by the Debt Aaron Root cutting into bond, in the penal sum of six hundred dollars with S.P. Bondock his Surety, in 10 days

And afterwards, to wit on the 23rd day of March AD 1850 it being one of the days of the March Term AD 1850 of Kane County Circuit Court, the following among other proceedings were had to wit:-

Asher Rossiter	} Debt	This day comes the plaintiff by Wright his Attorney, and moves the Court to amend the Record of the judgment entered in the above entitled cause at the last term of this Court, so that the Record shall read as follows
"		
Aaron Root & Paul Ambrose		

This day comes the plaintiff by Brown & Wright his Attorney and the defendant Root by Wilson & Wilcox his Attorneys also come, and waive a jury and submit this cause to the Court for trial, after hearing the evidence and argument of Counsel, the Court finds the issues joined in favor of the plaintiff, and that

Said defendant is indebted to the Plaintiff in the sum of Five hundred dollars, being the amount of the Penalty in the Bond sued upon, and also the damages on the breaches assigned in the Plaintiff's declaration at the sum of Four hundred Seventy Five dollars and Eighty Cents; it is therefore considered by the Court that the said Plaintiff have and recover of the said defendant Root his debt of Five hundred dollars aforesaid, and his costs in this suit expended and ^{have} execution therefor to be discharged upon the payment of the sum of Four hundred and Seventy Five dollars and Eighty Cents the damages aforesaid and the costs of this suit expended aforesaid, which amendment is ordered by the Court; And that an appeal be allowed to Supreme Court by the defendant Arthur Root entering into Bond in Penal sum of Six hundred dollars with S. P. Wardick his Surety, in Fort, days.

And afterward, to wit on the 23.^d day of January A.D. 1850 Arthur Root filed in the Clerk's Office of said Court a Bond of which the following is a copy, to wit

Know all men by these presents that we Arthur Root and Samuel P. Wardick of Kline County and State of Illinois are held and jointly bound unto Asher Rossiter of ~~Chas~~ R. County Illinois in the Penal sum of Six hundred dollars to be paid unto said Rossiter to which payment will and truly to be made, we bind ourselves our heirs executors Administrators or assigns jointly severally and firmly by these presents. Witness our hands and seals this 27.^d day of of January A.D. 1850

The Condition of the above obligation is such that whereas the said Rossiter did on the 4th day of January A.D. 1850 recover in the Kane County Circuit Court in the State of Illinois a judgment against the said Anson Root and Thos. Ambrose for the sum of Five hundred dollars Penalties, and Four hundred and Seventy Five⁰⁰ Dollars damages together with their Costs and Charges from which judgment said Root immediately prayed an appeal to the Supreme Court, which the Judge of said Circuit Court allowed on Condition that said Root enter into bond with the above bound obligor as his surety in the penal sum of Six hundred dollars Conditioned as the law directs and to be filed within Forty days; Now if the said Root shall pay the said judgment, Costs, interest and damages in case the said judgment shall be affirmed, and shall duly prosecute his said appeal, then this obligation to be void, otherwise to remain in full force and virtue.

Signed in presence of }

Anson Root $\frac{3}{4}$ L. B.
S. P. Berdick $\frac{3}{4}$ L. B.

State of Illinois
Kane County ss

I Charles B. Wells Clerk of Kane County Circuit Court do hereby

Certify that the foregoing is a true and perfect copy of the original Process. Writ. Reclamation, Return. Replication, Demurrer to replication to Third plea, Tapped Bond on file in my Office in the case in which they purport to be in; and also the order of Court on the Demurrer, and the final judgment as appears

of Record.

Witness my Name and Seal of
Said Court at Geneva in Said County,
this 28th day of May A.D. 1850.

Charles P. Hull

Clk

Sup Court. Ottawa
June Term A.D. 1850

And now comes the said Appellant Anson Root
and says that in the Record & proceedings aforesaid
there is error in this, to wit:

1st The Court erred in overruling the demurrer
to the plaintiffs replication to 3^d plea of
def't. Root.

2^d The find^g of the court is contrary to law.

3^d The finding of the Court is erroneous,

4th Judgment ought to have been rendered
in favor of the def't. Root.

Wherefore for the reasons aforesaid and for other
manifest error in the said record and
proceedings he asks that said judgment
may be reversed &c.

Wilson & Wilcox Attys.
for Appellant

And the said Plaintiff by Morris his attorney
comes and says that there is no such error
in the Record & proceedings as above alleged &
that he is ready to verify - wherefore &c. B. Morris p^{er}
he prays 3^d Judgt. May affirmed &c.

5th Mason Road imp.
by
Asher Rosier
Record

Filed June 11. 1837.
L. Veland & Co.

\$5. per. Clerk.

Root

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Refuter

This case presents the same question as the case of Root or Reed, et al., and the same decision must be made.

The judgment will be affirmed, with costs.